

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC2003-000075-001 DT

02/11/2004

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT  
P. M. Espinoza  
Deputy

FILED: \_\_\_\_\_

STATE OF ARIZONA  
**Appellant**

KENNETH M FLINT

v.

RENE WEBSTER CLAUSEN (001)  
**Appellee**

BRIAN F RUSSO

REMAND DESK-LCA-CCC  
SCOTTSDALE CITY COURT

RECORD APPEAL RULE / REMAND

SCOTTSDALE CITY COURT

Cit. No. #1521598

Charge: 3) DUI W/BAC OF .08 OR MORE

DOB: 06/09/72

DOC: 01/12/02

This Court has jurisdiction of this criminal appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Sections 12-124(A) and 13-4032.

This case has been under advisement since its assignment without oral argument on December 16, 2003. This Court has considered and reviewed the memoranda submitted by both parties and the record of the proceedings from the Scottsdale City Court.

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The only issue presented for review in this DUI case is whether the trial court abused its discretion in suppressing all statements of the Appellee (Rene Clausen) without finding that those statements were elicited in violation of Appellee's Miranda or Fifth Amendment Rights. This Court notes with interest that in the context of this appeal, the Appellee does not seriously contest the position of the Appellant<sup>1</sup>, though Appellee filed the motion to suppress those statements at the trial court level.

The facts of this case reveal that the arresting officer, who arrested Rene Clausen for investigation of a DUI offense, completed an entire Alcohol Influence Report during the roadside stop. Apparently, the trial judge in this case had ruled in the past, and maintains an informal rule that the completion of alcohol influence reports pre-arrest and pre-Miranda will not be tolerated. In this case, the trial judge concluded that the arresting officer had not placed Appellee Clausen in custody, and his interrogation of Clausen was not a "custodial" interrogation.<sup>2</sup> The trial judge ruled that even though there is no custodial interrogation, police officers may not ask certain questions during a traffic stop investigation.<sup>3</sup> However, the law in Arizona is clear, that a court must utilize an objective test to determine whether a criminal defendant was in custody at the time of questioning. If a defendant is in custody, then the police officer must inform that defendant of his Miranda rights.<sup>4</sup> The factors prescribed by the Arizona Supreme Court in determining whether a criminal defendant is in custody include the length and form of the interrogation.<sup>5</sup> However, the length and form of the interrogation do not alone, in and of themselves, determine whether an individual is in custody, and must be informed of his or her Miranda rights.<sup>6</sup>

This Court must conclude that the trial judge erred in focusing on the length and form of the interrogation as an indicia of whether an individual was in custody, requiring that the police inform that individual of their Miranda rights. The length and form of the interrogation itself does not trigger a requirement that the police must inform an individual of constitutional rights. Similarly, a hard and fast rule regarding the length and form of interrogation is not warranted by Arizona law.

The second issue raised by Appellant is that the trial court erred in determining that Appellee Clausen had made a specific request to speak with counsel when Clausen told a police officer that he wanted to speak to his roommate. Clausen allegedly wished to call his roommate to get the card or telephone number of an attorney. Appellee's request to call his roommate is not a clear indication of a request to speak with counsel.<sup>7</sup>

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<sup>1</sup> Appellee has submitted a one-page, one-sentence brief.

<sup>2</sup> R.T. of January 8, 2003, at pages 24, 73.

<sup>3</sup> The trial judge cited Berkemer v. McCarty, 468 U.S. 420, 104 S.Ct.3138, 82 L.Ed.2d 317 (1984).

<sup>4</sup> State v. Carter, 145 Ariz. 101, 700 P.2d 488 (1985).

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> See, State v. Eastlack, 180 Ariz. 243, 883 P.2d 999 (1994); State v. Transon, 186 Ariz. 482, 924 P.2d 486 (App. 1996);

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The trial judge erred in concluding that Appellee Clausen had made a clear request for counsel.

IT IS THEREFORE ORDERED reversing the orders of the trial court granting Appellee Clausen's Motions to Suppress in this case.

IT IS FURTHER ORDERED remanding this matter back to the Scottsdale City Court for proceedings consistent with this opinion, which may include the refiling of charges against Appellee Clausen.

/ s / HONORABLE MICHAEL D. JONES

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JUDICIAL OFFICER OF THE SUPERIOR COURT